Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Using Reverse Auctions	)	WC Docket No. 05-337
To Allocate USF Funds	)	

To: Federal-State Joint Board on Universal Service

COMMENTS OF NTCH, INC. ON REVERSE AUCTIONS

The Joint Board recently requested comment on the possible use of "reverse auctions" as a method for awarding high cost universal service funding to ETCs. NTCH, Inc. is a competitive carrier which provides commercial wireless service in about a dozen markets in the United States, many of them rural. NTCH believes that reverse auctions may have considerable merit as a means of quickly and fairly allotting Universal Service funds, but not in the manner outlined in the Board's "Discussion Proposal." The Discussion Proposal would almost entirely obviate the benefits of the reverse auction approach while exacerbating the unequal and anti-competitive treatment of ILECs which presently prevails.

The focus of the Joint Board's analysis should be on ensuring that needed communications services are delivered to the public in high cost areas at the lowest cost to the public at large. For too long the debate has centered on preserving USF as a sort of corporate entitlement program for

ILECs without regard to whether other carriers could address the basic communications needs more efficiently and more cheaply.

A. Benefit of Reverse Auctions

While the entire system of providing support to high cost carriers needs a major overhaul, not just a few adjustments, the use of reverse auctions can have some interim benefits. As experienced by competitive carriers, whether CLECs or wireless carriers, the present USF allocation process has a number of very grave flaws: (1) it takes far too long for competitive ETCs to be designated, resulting in gross competitive imbalances between ILECs and the competing carriers who should also be receiving and applying USF benefits; (2) the system rewards inefficiency by entrenching the cost structure of ILECs both as a measure of payments to themselves and to other ETCs who may be designated in their market; and (3) the system results in multiple carriers building out facilities and competing for the same high cost customers – at public expense – rather than having one or, at most, two efficient carriers provide the needed service to the public. Reverse auctions, if properly implemented, could ameliorate these problems.

1. Speedy designation of ETCs. In many cases it takes years for a competing carrier to be designated by the FCC as an ETC or for the FCC to act on a necessary state request to redefine the applicable study area for an already designated ETC. It took NTCH three years, for example, to obtain the necessary orders to receive ETC status in Colorado even though there

was never any issue about its qualifications. Other applicants' petitions have languished at the FCC for years. This is patently unfair because while these petitions drag through the administrative process, the ILECs with whom wireless carriers compete have enjoyed universal service support for years.

Under a reverse auction process, a bidder for the USF funding in a particular area would have to represent as a condition of participating in the auction that it would meet (or already meets) all of the criteria which the FCC has established for ETCs. Upon "winning" the reverse auction, the bidding carrier would automatically have ETC status without further ado. This would speed and simplify the ETC designation process and ensure that USF funds would begin to flow to the winning carrier immediately upon winning the auction, and the local citizenry would just as quickly start to see the benefits of the funds so distributed. It is critical, however, that auctions be conducted without delay so that the benefits of the new system can be realized as soon as possible. After an initial auction covering all markets, a new auction would be held every ten years. Companies acquiring licenses from reverse auction winners would be required to assume whatever obligations the winner had committed to in winning the auction.

2. Efficiency would be rewarded. Just as a regular auction for an FCC license uses economics to assign a license to the company who is most likely to put it to the highest use, the reverse auction should use economics to ensure that the services needed by the American people in high cost regions

are delivered at the lowest cost. The present system not only rewards gold-plating of services and facilities by ILECs (who thereby qualify for increased USF funding) but it also then compensates competitive ETCs at that same inefficient and inflated level. It is no wonder under the current system that the costs of USF are spiraling upward so quickly. The reverse auction should immediately put a stop to that inflationary spiral in two critical ways: (a) by awarding USF funds at the lowest level needed to actually deliver the required services to the public and (b) by limiting the number of carriers who can qualify for the funding to two in each market.

It is critical to the operative principle of reverse auctions that wireline and wireless carriers be in the same pool. The Discussion Proposal seems to contemplate a scheme in which the ILECs would remain entrenched in a discrete category with their current preferred status for at least ten years without having to compete for the USF dollars with wireless carriers. Let there be no mistake: it is the USF funding provided *to ILECs* that is at the root of the present USF cost spiral, not the funding that is now beginning to trickle to competing ETCs. Unless USF reform deals with this overarching fact, the system will continue to suffer through bloat. If wireless carriers are capable of providing the full complement of phone services for which USF is intended, there is absolutely no reason why massive subsidies to wireline carriers should be maintained. Both types of carriers should have the same opportunity to compete for the right to receive USF funds by offering services

to the public at low cost. The public -- not only in the high cost regions but in the remainder of the country -- is best served by meeting the needs of the high cost customer at the lowest cost. This is accomplished by letting ILECs participate in the reverse auction along with everyone else. Simply maintaining historic profits of ILECs by subsidies should not be a consideration.

3. Reduce the number of carriers qualifying for funding. NTCH believes that the benefits of competition can be maintained at considerably lower cost than the present system, by allotting the USF funds to the two lowest bidding carriers at the level set by the winning (lowest cost) bid. Unlike the present system which allots to funds to *all* ETCs in the market at the level of the ILEC (typically the *highest* cost provider), the new system would ensure that basic services are provided universally within a market by at least one carrier while also preserving the benefits of competition by allowing one other carrier to have the same level of benefit. The second carrier could, of course, decline the benefit and reject ETC status. In a two-carrier environment, the funds would be distributed on a per customer basis, i.e., each carrier would receive the per subscriber funding amounts based on the number of subscribers it actually has. The system proposed here could work by awarding USF funds to only one carrier in the market, but the "two-carrier" approach increases the likelihood that an ILEC could qualify for some funding, albeit not at the historically inflated levels, and also increases

the likelihood of competition for the customer with all the benefits that implies – lower cost, greater efficiency, more and better services, and improved quality.

In order to implement auctions between wireless and wireline carriers, there must be a means of putting the areas served by all competing carriers on a uniform scale. Wireless carriers are typically licensed on a CMA, BTA, or other county-defined basis while ILECs are typically certificated along wire center and study area lines not necessarily related to political boundaries. Because in most cases the geographic areas which define wireless license territories will be larger than the study areas assigned to rural carriers, CMAs should be used as the geographic basis for conducting auctions. CMAs are the smallest geographic areas typically used by the FCC as a licensing tool, and they are therefore most likely to approximate the size of the associated wireline study areas. However, ILECs would only be expected to provide service to the areas in which they are certificated within a give BTA. The auction bidding could be conducted on the basis of the cost to the bidder of delivering the supported USF services to everyone in the CMA or, in the case of wirelines, everyone within their portion of the CMA. By focusing on a comparison of competing costs to serve the whole CMA, the Commission can ensure that it gets the lowest cost to the American public to support universal service. Once that cost level is established, it would be the

basis for distributing support to both carriers who propose to provide such services on a per subscriber basis.[1]

With this system, reverse auctions could have an immediate impact in not only reducing the costs of the overall USF program but delivering better services more quickly to the public.

B. The "Discussion Proposal" Should Be Rejected

As noted above, several elements of the Discussion Proposal attached to the Joint Board's notice seeking comment on this matter would effectively gut the reform potential offered by reverse auctions.

1. The Discussion Proposal contemplates only two carriers being designated for support in each market, one of which must provide broadband internet access and the other of which must provide wireless mobility service. This would effectively ensure that for the foreseeable future, one of the supported entities would be the ILEC and the other would be one of the CMRS carriers. Broadband internet access is *not* one of the services which universal service is intended to support. While government policy has certainly been to foster the deployment of broadband internet access as widely as possible, this is being accomplished by various means and various transmission media, including cable, satellite, DSL, fixed wireless, Broadband over Power Line, and other avenues. As a nation, we have not decided that broadband internet access is the type of service, like basic voice

[1] If a wireline carrier or carriers became the ETC, it might be necessary in some markets to have a second "fill-in" auction for any areas of the country which were left without a designated ETC.

service, that should be subsidized. Yet the Discussion Proposal operates on that premise. That premise is misplaced because it may be just as, if not more, cost efficient for a rural customer to get broadband internet access from another kind of provider (such as a satellite carrier or a cable TV company) who can deliver that particular service but not the full range of phone services (mostly local in nature) which are required of ETCs. By the same token, wireless mobility is not necessarily the type of basic need which must or should be subsidized. In short, the Discussion Proposal distorts the primary objectives of the Universal Service program (ensuring the availability of basic phone service) in an apparent attempt to maintain something like the current status quo but with only one wireless carrier qualifying for support. This is plainly ill-conceived. Basic voice service and the ancillary services such as 911, whether provided by wire or by wireless, is all that should be subsidized. The USF should not be the source of funds for a nationwide build-out of broadband capacity by ILECs.

2. The contract structure envisioned by the Discussion Proposal is unworkable. Who, for example, would have standing to sue a breaching carrier? The better course is to have the USF funding authorization won in the auction be conditioned upon compliance with the commitments made by the bidder. If the bidder failed to meet its commitments, the FCC or state commission would have the authority to rescind its funding and conduct a new auction for which that carrier would not be eligible.

3. The Discussion Proposal contemplates allowing ILECs to declare themselves the winning broadband bidder for a "transitional" ten year period. As already indicated, the system should not be supporting broadband in the first place and should certainly not be entrenching a particular broadband provider when so many others are potentially available. The whole purpose of the auction system is to encourage participating carriers to lower their own costs –and thus the expense to the public who is subsidizing those costs – by having a competitive process. Exempting ILECs from the competitive process completely eviscerates the inherent advantage of the reverse auction system by not only leaving the inefficient provider entrenched for ten years but granting it inflationary increases free from any competitive pressure.

4. The Discussion Proposal also calls for the rejection of all bids if the administering authority reckons that the bidding is not competitive. It is unclear why this is a concern. We would anticipate that in every market there would be at least two bidders since the current ETC (usually the ILEC) would have no reason not to bid and in most cases there would also be at least one wireless carrier who would bid. It would make sense to establish a maximum amount that would be payable to the winning bidder in advance of the auction – the equivalent of a reserve price or minimum bid in a regular auction. This would ensure that if there were only one bidder, which is unlikely, the winning amount would not be outside a reasonable range. But apart from that, the interjection of a policing entity trying to decide whether

bidding was competitive or not would simply skew the process. Of course, the normal anti-collusion and antitrust rules would have to apply to preclude improper activity by bidders, but otherwise the very nature of the auction guarantees a competitive process.

C. Conclusion

For the reasons set forth above, NTCH endorses the reverse auction concept but only if the gaping exceptions contemplated by the Discussion Proposal are eliminated. Auctions are a simple, straightforward, rapid and highly efficient mechanism for allotting resources. If allowed to work in a pure manner, reverse auctions could very well be the means to ensuring universal service to rural and high cost subscribers at the lowest overall cost to the American people.

Respectfully submitted,

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Dated: October 10, 2006